



AP/BA
JW

PATENT

Customer No. 22,852

Attorney Docket No. 05793.3033-00000

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:)
)
Arthur KOEPEL et al.) Group Art Unit: 3626
)
Application No.: 09/660,495) Examiner: C. Gilligan
)
Filed: September 12, 2000)
)
For: SYSTEM AND METHOD FOR) Confirmation No.: 6314
PERFORMING WEB-BASED IN-)
VIEW MONITORING)

Mail Stop Appeal Brief--Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

TRANSMITTAL OF APPEAL BRIEF (37 C.F.R. 41.37)

Transmitted herewith is the APPEAL BRIEF in this application with respect to the
Notice of Appeal filed on February 18, 2005.

This application is on behalf of

☐ Small Entity ☒ Large Entity

Pursuant to 37 C.F.R. 41.20(b)(2), the fee for filing the Appeal Brief is:

☐ \$250.00 (Small Entity)

☒ \$500.00 (Large Entity)

TOTAL FEE DUE:

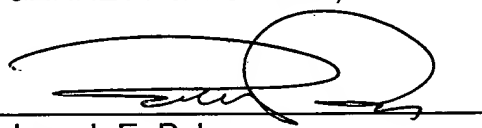
Notice of Appeal Fee	Paid on February 18, 2005
Extension Fee (if any)	\$0.00
Total Fee Due	\$500.00

☒ Enclosed is a check for \$500.00 to cover the above fees.

PETITION FOR EXTENSION. If any extension of time is necessary for the filing of this Appeal Brief, and such extension has not otherwise been requested, such an extension is hereby requested, and the Commissioner is authorized to charge necessary fees for such an extension to our Deposit Account No. 06-0916. A duplicate copy of this paper is enclosed for use in charging the deposit account.

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: April 15, 2005

By: 
Joseph E. Palys
Reg. No. 46,508



PATENT
Customer No. 22,852
Attorney Docket No. 05793.3033-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
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Arthur KOEPEL et al.)	Group Art Unit: 3626
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Application No.: 09/660,495)	Examiner: C. Gilligan
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PERFORMING WEB-BASED IN-)	
VIEW MONITORING)	

Attention: Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPEAL BRIEF UNDER BOARD RULE § 41.37

In support of the Notice of Appeal filed February 18, 2005, and further to Board Rule 41.37, Appellants present this brief and enclose herewith a check for the fee of \$500.00 required under 37 C.F.R. § 1.17(c).

This Appeal responds to the October 20, 2004, final rejection of claims 40-46, 48-57, 59-68, 70-72, and 76-84. Appellants have filed herewith an Amendment After Final canceling claims 76-84.

If any additional fees are required or if the enclosed payment is insufficient, Appellants request that the required fees be charged to Deposit Account No. 06-0916.



Table of Contents

I.	Real Party in Interest	3
II.	Related Appeal and Interferences	4
III.	Status of Claims	5
IV.	Status of Amendments	6
V.	Summary of Claimed Subject Matter	7
VI.	Grounds of Rejection	14
VII.	Argument	15
VIII.	Conclusion	31
Appendices		
A.	Claim Appendix	32
B.	Evidence Appendix	39
C.	Related Proceeding Appendix	40

I. Real Party In Interest

Capital One Financial Corporation is the real party in interest.

II. Related Appeals and Interferences

There are currently no other appeals or interferences, of which Appellants, Appellants' legal representative, or Assignee are aware, that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status Of Claims

This application includes eight-four (84) claims. Claims 1-39, 47, 58, 69, and 73-75 are canceled. Claims 40-46, 48-57, 59-68, 70-72, and 76-84 stand finally rejected under 35 U.S.C. § 103(a) and are appealed by Appellants. Appellants propose to cancel claims 76-84 in the Amendment After Final filed concurrently with this Appeal Brief. A list of the appealed claims is presented in the attached Appendix A.

IV. Status Of Amendments

In response to the first Office Action mailed March 29, 2004, Appellants filed an Amendment on July 27, 2004, canceling claims 1-13, 19, 24, 25, and 27-39; amending claims 14, 15, 17, 20, 23, 26, 40, 48, 51, 62, and 70; and adding new claims 74-84.

In response to the Final Office Action mailed October 20, 2004, Appellants filed an Amendment After-Final on December 22, 2004, canceling claims 14-18, 20-23, 26, 47, 58, 69, and 73-75, and amending claims 40, 51, and 62. In accordance with the Advisory Action mailed January 14, 2005, the After-Final Amendment was entered upon the filing the Notice of Appeal on February 18, 2005.

Appellants also filed concurrently with this Appeal Brief an Amendment After-Final pursuant to 37 C.F.R. §§ 1.116 and 41.33(b) in which Appellants propose to cancel claims 76-84.

V. Summary Of Claimed Subject Matter

a. Claim 40

Independent claim 40 is directed to a method for performing dynamic Web-based in-view monitoring. In accordance with certain aspects related to the present invention, the method may include appending a client side routine to a Web page, having content data (e.g., Figs. 4A-4J), that is provided by a Web server (e.g., Fig. 1, element 110). (See, e.g., Appellants' specification, p. 16, lines 8-31; p. 21, lines 4-13; and p. 31, lines 30-31.) The Web page may be sent to a plurality of client nodes (e.g., Fig. 1, elements 150), where it is displayed to a plurality of users located at the respective client nodes (e.g., Fig. 1, element 150). (See e.g., Appellants' specification, p. 10, lines 5-10; p. 21, lines 7-6, 14-15; and Fig. 5.)

In response to the Web page being displayed, each client node 150 initiates the client side routine to detect in-view user activities associated with each respective user browsing the Web page. In one aspect, the in-view user activities are associated with in-view response data reflecting whether or not the content data was viewable or partially viewable to each respective user. (See e.g., Appellants' specification, p. 10, lines 11-15; p. 21, line 15 to p. 22, line 23; and Fig. 4B, element 425 and Figs. 9B, elements 976 and 980.) The client side routine may also collect data reflecting the in-view user activities. The collected data may include information indicating the proportion of content actually viewable to a respective user. (See e.g., Appellants' specification, p. 28, line 4 to p. 31, line 5; Fig. 2, S.220; and Fig. 9C.) For example, referring to Fig. 9B of Appellants' specification, collected data may indicate that a

certain percentage (e.g., 75%) of component 978 is actually visible to a user viewing display 970.

Upon detecting a client side trigger event, the client side routine may send the collected data to the Web server 150. (*See e.g.*, Appellants' specification, p. 31, line 22 to p. 32, line 5 and Fig. 5, S. 550 and S.560.) The collected data may then be analyzed to determine user in-view characteristic data reflecting whether the content was viewable or partially viewable by the respective user. (*See e.g.*, Appellants' specification, p. 11, lines 16-30; p. 13, lines 6-29; p. 32, lines 10-21 p. 37, lines 3-15, and p. 37, line 28 to p. 13; Fig. 2, S. 220; and Fig. 8 S.820.)

b. Claim 51

Independent claim 51 is directed to a system 100 for performing dynamic Web-based analysis. In accordance with certain aspects related to the present invention, the system may include means for sending a Web page including content data to a plurality of client nodes that is provided by a Web server (*See e.g.*, Fig. 1; and Appellants' specification, p. 12, lines 6-14 [Web server 110], [clients 150], and lines 17-21 [network 140]; p. 16, lines 4-11 and 28-31; p. 17, lines 23-26; p. 36, lines 11-18; and Figs. 1 and 4A-4J, elements 400-490 and the information presented within the exemplary Web page 400.) Accordingly, the "means for sending" may be associated with a computing system, such as Web server 110, or any element of Web server 110 that executes Web server software such as software network 140, and/or any combination thereof.

The system may also include means for displaying the Web page to a plurality of users located at respective client nodes 150. (*See e.g.*, Appellants' specification, p. 10, lines 11-12; p. 12, lines 12-13; p. 15, line 5 [browser software executing on client nodes

150].) The system may further include means for detecting in-view user activities associated with each respective user browsing the Web page. In one aspect, the in-view user activities may be associated with in-view response data reflecting whether or not the content data was viewable or partially viewable to each respective user. (See *e.g.*, Appellants' specification, p. 10, lines 11-15; p. 21, line 15 to p. 22, line 23; and Fig. 4B, element 425 and Figs. 9B, elements 976 and 980 [client side scripts executing on clients 150].) The system may also include means for collecting data reflecting the in-view user activities. The collected data may include information indicating the proportion of content actually viewable to a respective user. (See *e.g.*, Appellants' specification, p. 28, line 4 to p. 31, line 5; Fig. 2, S.220; and Fig. 9C. [client side scripts executing on clients 150].) For example, referring to Fig. 9B of Appellants' specification, collected data may indicate that a certain percentage (*e.g.*, 75%) of component 978 is actually visible to a user viewing display 970.

Additionally, the system may include means for detecting a client side trigger event. (See *e.g.*, Appellants' specification, p. 31, lines 22-29 and Fig. 5, S.550 [client side scripts executing on clients 150].) Further, the system may include means for sending the collected data to the Web server 110 in response to the detected client side trigger event. (See *e.g.*, Appellants' specification, p. 31, line 22 to p. 32, line 5 and Fig. 5, S.560 [client side script executing on client node 150].) Moreover, the system may include means for analyzing the collected data to determine user in-view characteristic data reflecting whether the content was viewable or partially viewable by the respective user. (See *e.g.*, Appellants' specification, p. 11, lines 16-30; p. 13, lines 6-29; p. 32, lines 10-21 p. 37, lines 3-15, and p. 37, line 28 to p. 13; Fig. 2, S. 220; and Fig. 8

S.820. [Web server 110, analytical program 115, middleware program 112, and/or billing program 113.]

c. Claims 54-57 and 59-61

Claim 54 depends from claim 51 and concerns a system where the means for detecting in-view user activities, means for collecting, means for detecting a client side trigger event and means for sending are all included in a client side routine (e.g., client side script executing on clients 150) that is appended to a URL placed on the Web page. (*See e.g.*, Appellants' specification, p. 28, line 4 to p. 31, line 5; p. 31, line 22 to p. 32, line 5; Fig. 2, S.220; Fig. 5, S.550 and S. 560; and Fig. 9C. [client side scripts executing on clients 150].)

Claim 55 depends from claim 51 and concerns a system where the collected data is stored in a client side data store (*See e.g.*, Fig. 1, element 160) and each client side trigger event is associated with each respective client side data store 160 being filled with the collected data above a predetermined threshold level. (*See e.g.*, Appellants' specification, p. 8, lines 1-2 and p. 31, lines 24-27.)

Claim 56 depends from claim 51 and concerns each client side trigger event being associated with a respective user closing a browser application executing at a respective client node. (*See e.g.*, Appellants' specification, p. 8, lines 1-2 and p. 31, lines 24-27.)

Claim 57 depends from claim 51 and concerns each client side trigger event being associated with a respective user, located at a respective client node, selecting a URL displayed on the Web page. (*See e.g.*, Appellants' specification, p. 8, lines 1-2 and p. 31, lines 24-27.)

Claim 59 depends from claim 51 and concerns a system including means for analyzing the collected data. (*See e.g.*, Appellants' specification, p. 11, lines 16-30; p. 13, lines 6-29; p. 32, lines 10-21 p. 37, lines 3-15, and p. 37, line 28 to p. 13; Fig. 2, S. 220; and Fig. 8 S.820. [Web server 110, analytical program 115, middleware program 112].) Further, claim 59 includes means for generating billing records based on the analysis of the collected data (e.g., Web server 110 and/or billing program 113) and means for sending the billing records to at least one of a plurality of third party nodes (e.g., billing program 113, Web server 110, and/or network 140) (*See e.g.*, Appellants' specification, p. 11, lines 16-30; p. 13, lines 6-29; p. 32, lines 10-21; p. 37, lines 3-15, and p. 37, line 28 to p. 13; Fig. 2, S. 220; and Fig. 8 S.830-S.860.)

Claim 60 depends from claim 59 and concerns content data including a plurality of third party content data, and wherein each third party content data is provided by a respective one of the plurality of third party nodes. (*See e.g.*, Appellants' specification, p.36, lines 11-19 and Fig. 7, S.750.)

Claim 61 depends from claim 51 and concerns in-view user activities that are mouse pointer position data. (*See e.g.*, Appellants' specification, p. 21, line 28 to p. 22, line 10.)

d. Claim 62

Independent claim 62 concerns a computer-readable medium for performing a method of dynamic Web-based in-view monitoring. In accordance with certain aspects related to the present invention, the method may include appending a client side routine to a Web page, having content data (e.g., Figs. 4A-4J), that is provided by a Web server (e.g., Fig. 1, element 110). (*See, e.g.*, Appellants' specification, p. 16, lines 8-31; p. 21,

lines 4-13; and p. 31, lines 30-31.) The Web page may be sent to a plurality of client nodes (e.g., Fig. 1, elements 150), where it is displayed to a plurality of users located at the respective client nodes (e.g., Fig. 1, element 150). (See e.g., Appellants' specification, p. 10, lines 5-10; p. 21, lines 7-6, 14-15; and Fig. 5.)

In response to the Web page being displayed, each client node 150 initiates the client side routine to detect in-view user activities associated with each respective user browsing the Web page. In one aspect, the in-view user activities are associated with in-view response data reflecting whether or not the content data was viewable or partially viewable to each respective user. (See e.g., Appellants' specification, p. 10, lines 11-15; p. 21, line 15 to p. 22, line 23; and Fig. 4B, element 425 and Figs. 9B, elements 976 and 980.) The client side routine may also collect data reflecting the in-view user activities. The collected data may include information indicating the proportion of content actually viewable to a respective user. (See e.g., Appellants' specification, p. 28, line 4 to p. 31, line 5; Fig. 2, S.220; and Fig. 9C.) For example, referring to Fig. 9B of Appellants' specification, collected data may indicate that a certain percentage (e.g., 75%) of component 978 is actually visible to a user viewing display 970.

Upon detecting a client side trigger event, the client side routine may send the collected data to the Web server 150. (See e.g., Appellants' specification, p. 31, line 22 to p. 32, line 5 and Fig. 5, S. 550 and S.560.) The collected data may then be analyzed to determine user in-view characteristic data reflecting whether the content was viewable or partially viewable by the respective user. (See e.g., Appellants'

specification, p. 11, lines 16-30; p. 13, lines 6-29; p. 32, lines 10-21 p. 37, lines 3-15,
and p. 37, line 28 to p. 13; Fig. 2, S. 220; and Fig. 8 S.820.)

VI. Grounds of Rejection

A. Claims 40-46, 48-57, 59-68, 70-72, and 76-84 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Himmel et al.* (U.S. Patent No. 6,317,782) in view of *Mason et al.* (U.S. Patent No. 6,401,075).

VII. Argument

The rejections of claims 40-46, 48-57, 59-68, 70-72, and 76-84 under 35 U.S.C. § 103(a)

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, the prior art reference or references, taken alone or combined, must teach or suggest each and every element recited in the claims. See M.P.E.P. § 2143.03. Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the references in a manner resulting in the claimed invention. See M.P.E.P. § 2143. Third, a reasonable expectation of success must exist. See M.P.E.P. § 2143.02. Moreover, each of these requirements must “be found in the prior art, and not based on applicant’s disclosure.” M.P.E.P. § 2143. For at least the following reasons, Appellants respectfully submit the Examiner has failed to establish a *prima facie* case of obviousness in connection with the rejections of claims 40-46, 48-57, 59-68, 70-72, and 76-84.

- a. **The rejection of claims 40, 41, 42, 51, 52, 53, 62, 63, and 64 under 35 U.S.C. § 103(a) must be reversed because *Himmel et al.* and *Mason et al.* do not teach or suggest, at least, collecting data reflecting in-view user activities, where the collected data includes information indicating the proportion of content actually viewable to a user.**

- (i) Claim 40

Appellants respectfully traverse the rejection of claim 40 under 35 U.S.C. § 103(a) because *Himmel et al.* and *Mason et al.* do not teach or suggest each and every recitation of claim 40. This claim recites a method for performing

dynamic Web-based in-view monitoring. A client side routine is appended to a Web page provided by a Web server. In response to the Web page being displayed to a user, the respective client node of the user initiates the client side routine to perform: detecting in-view user activities associated with in-view response data reflecting whether or not the content data was viewable or partially viewable to each respective user; collecting data reflecting the in-view user activities, where the collected data includes information indicating the proportion of content actually viewable to a respective user; detecting a client side trigger event; and sending the collected data to the Web server in response to the detected client side trigger event. The method analyzes the collected data to determine user in-view characteristic data reflecting whether the content was viewable or partially viewable by each respective user.

In contrast, *Himmel et al.* discloses a system that tracks the amount of time an advertisement is actually viewable on a Web page. (*Himmel et al.*, col. 3, lines 56-63 and col. 9 line 60 to col. 10, line 5.) This is different from collecting data reflecting in-view user activities, where the collected data includes information indicating the proportion of content actually viewable to a respective user, as recited in claim 40.

Mason et al. does not make up for the above noted deficiencies of *Himmel et al.* Indeed, the Examiner admits that *Mason et al.* has no disclosure relating to “in-view characteristic data” that “reflects whether the content was viewable or partially viewable.” (See Final Office Action, page 3, lines 4-6.) Instead, *Mason et al.* discloses a system allowing a Web page server to monitor the number of “hits” or “click-throughs” associated with an advertisement link displayed at a URL. (Col. 4, lines 20-37.) For instance, a “hit” of the advertisement link occurs when a user simply causes the URL to

be displayed. (Col. 4, lines 20-28.) A “click-through” occurs when a user actually clicks on the advertisement to cause the advertiser’s website to then be displayed. (Col. 4, lines 29-37.) From the monitored number of hits or click-throughs, the system disclosed by *Mason et al.* determines the success of a particular advertisement.

The Examiner asserts that the cited references teach collecting data reflecting the in-view user activities that “includes information indicating the proportion of content actually viewable to a respective user (see column 10, lines 11-14). “ (Final Office Action, page 8, ¶ 25.) Indeed, the Examiner argues that these features are “represented in Himmel as ‘the visible time, and any other additional information required, for which the advertisement A 604 was present.’” (See Advisory Action, p. 2.) The Examiner further asserts “[b]ecause content is displayed to a user over time, recording visible time for which an advertisement was present is a form of data indicating the proportion of content actually viewable.” *Id.*

Appellants disagree with the Examiner’s interpretation of *Himmel et al.* The cited portion of *Himmel et al.* (i.e., col. 10, lines 11-14.), or any other portion of the reference, does not discuss or suggest collecting data reflecting the proportion of content that is actually viewable to a user, as recited in claim 40. Instead, *Himmel et al.* merely discusses the transmission of time data to a server. That is, when an advertisement is visible, *Himmel et al.* begins monitoring data that reflects nothing more than an amount of time that the advertisement was visible. The reference does not disclose determining, collecting, or even considering data indicating a proportion of any visible content. Thus, the cited art does not support the Examiner’s conclusion that data reflecting the amount of time content was visible also represents information reflecting a

proportion of viewable content. The “proportion of content actually viewable to a respective user” is associated with displayed information (e.g., content) that is viewed by a person. Appellants specification describes examples of such content in the form of a Web page 976 and target component 978 that are partially in view. (See e.g., p. 22, line 31 to p. 23, line 1; p. 28, line 4 to p. 31, line 5; Fig. 2, S.220; and Figs. 9A-9C.) Accordingly, the time data collected by *Himmel et al.* is not the same as collected data indicating a “proportion of content,” as recited in claim 40

Appellants’ position is reinforced by the fact that claim 40 requires the collected data to be analyzed to “determine user in-view characteristic data reflecting whether the content was viewable or partially viewable by the respective user.” Because *Himmel et al.* begins to monitor time data when an advertisement is visible, there is no need for *Himmel et al.* to analyze the time data to determine whether the advertisement was visible or even partially visible. Indeed, *Himmel et al.* does not perform such an analysis. Instead, *Himmel et al.* merely sends the time data to server 188 following the collection of the time data. (See *Himmel et al.*, col. 10, lines 11-14.)

The Examiner asserts col. 9, lines 60-63 of *Himmel et al.* teaches the analyzing step recited in claim 40. (See *Final Office Action*, p. 6, ll. 20-23.) Appellants disagree. As described in *Himmel et al.*, “[o]nce the Advertisement Control Module 604 detects that an advertisement A 606 has become visible (Step 814), the Advertisement Control Module 604 begins to track the time during which the advertisement A 606 is visible.” As this cited portion of *Himmel et al.* explains, time tracking commences once module 604 detects that an advertisement has become visible, which takes place prior to any time data being delivered to server 188. Thus, contrary to the Examiner’s assertions,

this, or any other, portion of *Himmel et al.* does not teach or suggest analyzing the collected data, as recited in claim 40, because *Himmel et al.* is just beginning to collect time data upon detecting a visible advertisement. This is different from analyzing data that has already been collected and sent to a Web server in response to a client side trigger event, as recited in claim 40.

Moreover, the information monitored by *Himmel et al.* is associated with fully viewable advertisements. For instance, while *Himmel et al.* indicates that the term “viewable” may define when an advertisement is completely or identifiably (i.e., partially but not completely) seen by the end user (*See Himmel et al.*, col. 8, lines 44-46.) the reference states,

it will be assumed for the remainder of this discussion that an advertisement A-D 606-612 is viewable only when the *entire advertisement* A-D 606-612 is *completely viewable* within the display area of the Browser 600. As each advertisement A-D 606-612 becomes viewable, the Advertisement Control Module 604 detects this visibility and begins to *time the viewable event*.

(*Himmel et al.*, col. 8, lines 50-53 and col. 9, line 60 to col. 10, line 5) (emphasis added). Accordingly, the disclosure of *Himmel et al.* relied upon by the Examiner (i.e., col. 10, lines 11-14) describes a process where control module 604 only tracks the amount of time an advertisement is completely visible. Accordingly, *Himmel et al.* cannot teach or suggest collecting data reflecting the in-view user activities, where the collected data includes information indicating the proportion of content actually viewable to a respective user or analyzing the collected data to determine user in-view characteristic data reflecting whether the content was viewable or partially viewable by each respective user, as recited in claim 40. Even if, however, the data collected by control module 604 includes partially viewable data, *Himmel et al.* does not collect or

analyze data including information indicating the proportion of content actually viewable to a respective user, as recited in claim 40.

Also, the “additional information” sent to the server 188 described in *Himmel et al.* does not teach or suggest information indicating the proportion of content actually viewable, as recited in claim 40. (See Advisory Action, page 2, quoting *Himmel et al.*, col. 10, lines 11-14.) *Himmel et al.* does not identify what is meant by “additional information,” nor does the Examiner offer an explanation of how this “information” represents a disclosure of “information reflecting the proportion of actually viewable content to a respective user,” as recited in claim 40. Determinations of obviousness must be supported by evidence in the record. See *In re Zurko*, 258 F.3d 1379, 1386 (Fed. Cir. 2001) (finding that the factual determinations central to the issue of patentability, including conclusions of obviousness by the Board, must be supported by “substantial evidence”). The Office Action and the cited art both fail to disclose or suggest that the “additional information” sent to the server in *Himmel et al.* relates to collected data including information indicating the proportion of content actually viewable to a respective user. As such, the record is absent of any evidence to support the Examiner’s assertions set forth in the Advisory Action.

Because *Mason et al.* or *Himmel et al.*, alone or in combination, fail to teach or suggest at least collecting data reflecting in-view user activities, where the collected data includes information indicating the proportion of content actually viewable to a respective user, as recited in claim 40, Appellants submit the Examiner has not established a *prima facie* case of obviousness. For at least these reasons, Appellants

respectfully request that the Board reverse the rejection of claim 40 under 35 U.S.C. § 103(a) and allow the claim.

(ii) Claims 41 and 42

Claims 41 and 42 depend from claim 40. As explained, claim 40 is distinguishable from *Mason et al.* and *Himmel et al.* Accordingly, claims 41 and 42 are also distinguishable from these references for at least the same reasons set forth above in connection with claim 40. Therefore, Appellants respectfully request that the Board reverse the rejection of these claims under 35 U.S.C. § 103(a) and allow the claims.

(iii) Claims 51 and 62

The Examiner rejects claim 51 for the same reasons set forth for claim 40. (See *Final Office Action*, page 9, ¶¶ 30-31.) As explained, claim 40 is distinguishable from *Mason et al.* and *Himmel et al.* Accordingly, claim 51 and 62 are also distinguishable from these references for at least the same reasons set forth above in connection with claim 40. Therefore, Appellants respectfully request that the Board reverse the rejection of claims 51 and 62 under 35 U.S.C. § 103(a) and allow the claims.

(iv) Claims 52, 53, 63, and 64

Claims 52, 53 and 63, 64 depend from claims 51 and 62, respectively. As explained, claims 51 and 62 are distinguishable from *Mason et al.* and *Himmel et al.* Accordingly, claims 52, 53, 63, and 64 are also distinguishable from these references for at least the same reasons set forth above in connection with claims 51 and 62. Therefore, Appellants respectfully request that the Board reverse the rejection of these claims under 35 U.S.C. § 103(a) and allow the claims.

- b. **The rejection of claims 43, 54, and 65 under 35 U.S.C. § 103(a) must be reversed because *Himmel et al.* and *Mason et al.* do not teach or suggest, at least, a client side routine is appended to a URL placed on the Web page.**

(i) Claim 43

In rejecting claim 43, the Examiner asserts *Himmel et al.* discloses a client side routine appended to a URL placed on a Web page. (See *Final Office Action*, page 7, ¶ 21.) Appellants disagree with the Examiner's interpretation of *Himmel et al.* While the Advertisement Control Module 604 disclosed by *Himmel et al.* is sent with Web page 194, the reference does not suggest that module 604 is appended to a URL placed on the Web page. Instead, Advertisement Control Module 604 is an applet that is downloaded with Web page 194. (See *Himmel et al.*, col. 8, lines 19-21.) A URL is a descriptor that specifically defines a type of Internet resource and its location. (See e.g., Appellants' Specification, p. 3, ll. 15-26.) An applet, on the other hand, is a program that is designed to be executed within another application. Generally, these programs may be transmitted from a server to a client to allow access to the server.

The client side routine recited in claim 43 is a program that is appended to a URL, which is placed on the Web page. The Advertisement Control Module 604 disclosed by *Himmel et al.*, however, is not appended to the Web page 194, much less a URL included in the Web page 194. As shown in Fig. 6, and described in column 8, lines 19-28, Advertisement Control Module 604 is not appended to web page [1]94, but rather is downloaded and executed "[d]uring the downloading of web page 194," and is "responsible for displaying the web page 194 including its associated contents" and "controlling all related movement of web page 194" Thus, the Advertisement Control Module 604 is distinguishable from a routine that is appended to a URL that is

placed on a downloaded Web page, as recited in claim 43. Therefore, because *Himmel et al.* does not support the rejection of claim 43 under 35 U.S.C § 103(a) as asserted by the Examiner, Appellants respectfully request that Board reverse the rejection and allow the claim.

(ii) Claims 54 and 65

The Examiner rejects claims 54 and 65 for the same reasons set forth for claim 43. (See *Final Office Action*, page 9, ¶¶ 30-31.) As explained, claim 43 is distinguishable from *Mason et al.* and *Himmel et al.* Accordingly, claim 54 and 65 are also distinguishable from these references for at least the same reasons set forth above in connection with claim 43. Therefore, Appellants respectfully request that the Board reverse the rejection of claims 54 and 65 under 35 U.S.C. § 103(a) and allow the claims.

- c. The rejection of claims 44, 55, and 66 under 35 U.S.C. § 103(a) must be reversed because *Himmel et al.* and *Mason et al.* do not teach or suggest, at least, collected data that is stored in a client side data store and each client side trigger event is associated with each respective client side data store being filled with the collected data above a predetermined threshold level.**

(i) Claim 44

In rejecting claim 44, the Examiner asserts that col. 8, lines 54-65 of *Himmel et al.* discloses collected data that is stored in a client side data store and each client side trigger event is associated with each respective client side data store being filled with the collected data above a predetermined threshold level. (See *Final Office Action*, page 7, ¶ 22.) Appellants disagree with the Examiner's interpretation of *Himmel et al.* The cited portion of *Himmel et al.* explains that module 604 begins to time a viewable event when each advertisement A-D 606-612 becomes viewable. Nowhere does

Himmel et al. suggest that the time data (which is distinguishable from information indicating a proportion of viewable content) is sent to server 188 when a client side data store is filled to a predetermined threshold value. Instead, *Himmel et al.* states that the time interval data is transmitted to server 188 when the user is “still connected to the Internet.” (See *Himmel et al.* col. 8, lines 61-65.) Therefore, because *Himmel et al.* does not support the Examiner’s assertions, Appellants respectfully request that the Board reverse the rejection of claim 44 and allow the claim.

(ii) Claims 55 and 66

The Examiner rejects claims 55 and 66 for the same reasons set forth for claim 44. (See *Final Office Action*, page 9, ¶¶ 30-31.) As explained, claim 44 is distinguishable from *Mason et al.* and *Himmel et al.* Accordingly, claim 55 and 66 are also distinguishable from these references for at least the same reasons set forth above in connection with claim 44. Therefore, Appellants respectfully request that the Board reverse the rejection of claims 55 and 66 under 35 U.S.C. § 103(a) and allow the claims.

- d. The rejection of claims 45, 56, and 67 under 35 U.S.C. § 103(a) must be reversed because *Himmel et al.* and *Mason et al.* do not teach or suggest, at least, each client side trigger event being associated with a respective user closing a browser application executing at a respective client node.**

(i) Claim 45

In rejecting claim 45, the Examiner asserts that col. 10, lines 6-26 of *Himmel et al.* discloses each client side trigger event being associated with a respective user closing a browser application executing at a respective client node. (See *Final Office Action*, page 8, ¶ 23.) Appellants disagree with the Examiner’s interpretation of *Himmel et al.* The cited portion of *Himmel et al.* describes operations that enable the time

interval data to be transmitted to server 188 when a “connection [to the Internet] is still present.” (*See Himmel et al.* col. 10, lines 11-14.) Nowhere does the reference disclose operations that suggest the time data (which is distinguishable from information indicating a proportion of viewable content) is transmitted to server 188 based on a user closing a browser application. There is a difference between using deactivation of a browser as a trigger and sending data to a server based on a connection with the server. For instance, according to *Himmel et al.*, time data is sent to server 188 while a connection to the Internet is still present. When a user deactivates the Web browser (i.e., the user viewing Web page 194 via a cache of data maintained by the Web browser), *Himmel et al.* ceases to send data to server 188. Instead, the time data is recorded to a cookie representing the visible advertisement. (*See Himmel et al.*, col. 10, ll. 16-20.) Accordingly, *Himmel et al.* cannot and does not teach suggest a client side trigger event being associated with a user closing a browser application executing a client node, as recited in claim 45. Therefore, because *Himmel et al.* does not support the Examiner’s assertions, Appellants respectfully request that the Board reverse the rejection of claim 45 and allow the claim.

(ii) Claims 56 and 67

The Examiner rejects claims 56 and 67 for the same reasons set forth for claim 45. (*See Final Office Action*, page 9, ¶¶ 30-31.) As explained, claim 45 is distinguishable from *Mason et al.* and *Himmel et al.* Accordingly, claim 56 and 67 are also distinguishable from these references for at least the same reasons set forth above in connection with claim 45. Therefore, Appellants respectfully request that the Board

reverse the rejection of claims 56 and 67 under 35 U.S.C. § 103(a) and allow the claims.

- e. **The rejection of claims 46, 57, and 68 under 35 U.S.C. § 103(a) must be reversed because *Himmel et al.* and *Mason et al.* do not teach or suggest, at least, each client side trigger event being associated with a respective user, located at a respective client node, selecting a URL displayed on the Web page.**

(i) Claim 46

In rejecting claim 46, the Examiner asserts that col. 9, lines 28-41 of *Himmel et al.* discloses each client side trigger event being associated with a respective user, located at a respective client node, selecting a URL displayed on the Web page. (See *Final Office Action*, page 8, ¶ 24.) Appellants disagree with the Examiner's interpretation of *Himmel et al.* The cited portion of *Himmel et al.* describes a process where a user requests a URL and, in response, server 188 provides Web page 194. (See *Himmel et al.* col. 9, lines 28-30.) This is not a client side trigger event that causes collected data to be sent to a Web server, as recited in claim 46. Instead, the portion of *Himmel et al.* cited by the Examiner merely describes processes associated with initially receiving a Web page with advertisements based on a user selecting a URL. This is different from a client side triggering event, as recited in claim 46. Accordingly, this, or any other, portion of *Himmel et al.* does not disclose sending collected data (e.g., information indicative to a proportion of viewable content) to a Web server based on a user selecting a URL, as recited in claim 46. Indeed, *Himmel et al.* sends time data (not collected data as recited in claim 46) based upon a time out period and an established connection to a network (e.g., the Internet). (See *Himmel et al.*, col. 10, ll. 6-11.) Further, *Mason et al.* does not make up for the deficiencies of *Himmel et al.* Nowhere does *Mason et al.* disclose triggering events associated with user selections of a URL.

Therefore, because cited art does not support the rejection of claim 46 under 35 U.S.C. 103(a) as asserted by the Examiner, Appellants respectfully request that the Board reverse the rejection and allow the claim.

(ii) Claims 57 and 68

The Examiner rejects claims 57 and 68 for the same reasons set forth for claim 46. (*See Final Office Action*, page 9, ¶¶ 30-31.) As explained, claim 46 is distinguishable from *Mason et al.* and *Himmel et al.* Accordingly, claim 57 and 68 are also distinguishable from these references for at least the same reasons set forth above in connection with claim 46. Therefore, Appellants respectfully request that the Board reverse the rejection of claims 57 and 68 under 35 U.S.C. § 103(a) and allow the claims.

- f. **The rejection of claims 48, 49, 59, 60, 70, and 71 under 35 U.S.C. § 103(a) must be reversed because *Himmel et al.* and *Mason et al.* do not teach or suggest, at least, analyzing the collected data at the Web server, generating billing records based on the analysis of the collected data, and sending the billing records to at least one of a plurality of third party nodes.**

(ii) Claim 48

The Examiner admits that *Himmel et al.* fails to disclose analyzing the collected data at the Web server, generating billing records based on the analysis of the collected data, and sending the billing records to at least one of a plurality of third party nodes, as recited in claim 48. (*See Final Office Action*, page 8, ¶ 26.) To compensate for these deficiencies, the Examiner alleges *Mason et al.* discloses the above mentioned recitations. Appellants disagree with the Examiner's interpretation of *Mason et al.*

Mason et al. discloses a system for monitoring and purchasing Internet advertising. According to *Mason et al.*, an entity may purchase space on an online Web

page. The system implements processes that monitors and reports the amount of viewer traffic a particular space. Based on the analysis of the traffic data, the system may enable adjustments to the advertisements to increase traffic. (See, e.g., *Mason et al.*, col. 4, lines 21-36, 47-53, and 64-66 and col. 6, lines 27-30.)

Contrary to the Examiner's assertions, *Mason et al.* does not teach or suggest generating billing records based on the collected data and sending the billing records to third party nodes, as recited in claim 48. Instead, as explained above, *Mason et al.* discloses a process where collected traffic data is used to assist in changing advertisements that are rendered in a purchased Web page space. The accounting information (e.g., costs of various advertisement placements) disclosed by *Mason et al.* (See, e.g., col. 7, lines 6-10.) is not the same as billing records that are generated based on an analysis of the collected data, as recited in claim 48. Indeed, *Mason et al.* does not generate any billing records. Therefore, because *Himmel et al.* does not support the Examiner's assertions, Appellants respectfully request that the Board reverse the rejection of claim 48 and allow the claim.

(ii) Claim 49

Claim 49 depends from claim 48. As explained, claim 48 is distinguishable from *Mason et al.* and *Himmel et al.* Accordingly, claim 49 is also distinguishable from these references for at least the same reasons set forth above in connection with claim 48. Therefore, Appellants respectfully request that the Board reverse the rejection of claim 49 under 35 U.S.C. § 103(a) and allow the claim.

(iii) Claims 59, 60, 70, and 71

The Examiner rejects claims 59, 60, 70, and 71 for the same reasons set forth for claims 48 and 49. (See *Final Office Action*, page 9, ¶¶ 30-31.) As explained, claims 48 and 49 are distinguishable from *Mason et al.* and *Himmel et al.* Accordingly, 59, 60, 70, and 71 are also distinguishable from these references for at least the same reasons set forth above in connection with claims 48 and 49. Therefore, Appellants respectfully request that the Board reverse the rejection of 59, 60, 70, and 71 under 35 U.S.C. § 103(a) and allow the claims.

- g. The rejection of claims 50, 61, and 72 under 35 U.S.C. § 103(a) must be reversed because *Himmel et al.* and *Mason et al.* do not teach or suggest, at least, in-view user activities that are mouse pointer position data.**

(i) Claim 50

In rejecting claim 50, the Examiner asserts that col. 9, line 60 to col. 10, line 5 of *Himmel et al.* in-view user activities that are mouse pointer position data. (See *Final Office Action*, page 9, ¶ 28.) Appellants disagree with the Examiner's interpretation of *Himmel et al.* The cited portion of *Himmel et al.* describes a process associated with control module 604 and its ability to detect when an advertisement becomes visible to begin tracking the time that the advertisement is visible. As mentioned in the portion of *Himmel et al.* cited by the Examiner, control module 604 may determine when a visible event exceeds a time out period for inactivity. Based on that determination, module 604 may cease the timing of the visible event. (See *Himmel et al.* col. 9, line 65 to col. 10, line 5.) Contrary to the Examiner's assertions, tracking the time that advertisements are visible based on visible events is not the same as user-activity associated with mouse position data. Instead, *Himmel et al.* merely describes a system that begins monitoring

time data when a visibility event occurs (i.e., when an advertisement is completely visible). While visibility of an advertisement may be affected by a user relocating an advertisement on a display, there is no indication in *Himmel et al.* that such an action includes detecting in-view activities that are mouse position data. Instead, *Himmel et al.* focuses on the visibility of an advertisement alone. If the advertisement is fully visible, Advertisement Control Module 604 begins to track time data, regardless of the position of a mouse pointer. This is distinguishable from the recitations of claim 50. Therefore, because *Himmel et al.* does not support the Examiner's assertions, Appellants respectfully request that the Board reverse the rejection of claim 50 and allow the claim.

(ii) Claims 61 and 72

The Examiner rejects claims 61 and 72 for the same reasons set forth for claim 50. (See *Final Office Action*, page 9, ¶¶ 30-31.) As explained, claim 50 is distinguishable from *Mason et al.* and *Himmel et al.* Accordingly, claim 61 and 72 are also distinguishable from these references for at least the same reasons set forth above in connection with claim 50. Therefore, Appellants respectfully request that the Board reverse the rejection of claims 61 and 72 under 35 U.S.C. § 103(a) and allow the claims.

h. The rejection of claims 76-84 under 35 U.S.C. § 103(a) are rendered moot based on the Amendment filed concurrently with this Appeal Brief under 37 C.F.R. §§ 1.116 and 41.33(b) canceling these claims.

Appellants file concurrently with this Appeal Brief an Amendment pursuant to 37 C.F.R. §§ 1.116 and 41.33(b) proposing to cancel claims 76-84. Upon entry of this amendment by the Examiner, the rejection of these claims under 35 U.S.C. § 103(a) will be rendered moot.

VIII. Conclusion

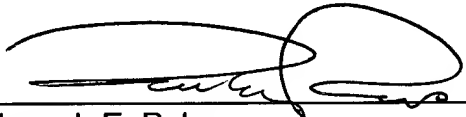
For the reasons given above, pending claims 40-46, 48-57, 59-68, and 70-72 (with claims 76-84 proposed to be canceled) are allowable and reversal of the Examiner's rejection is respectfully requested.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Appeal Brief, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: April 15, 2005

By: 
Joseph E. Palys
Reg. No. 46,508

Appendix A: Listing of Claims Under Rule 41.37(c)(1)(viii)

1-39. (Canceled)

40. (Previously Presented) A method for performing dynamic Web-based in-view monitoring, the method comprising:

appending a client side routine to a Web page provided by a Web server, wherein the Web page includes content data;

sending the Web page to a plurality of client nodes; and

displaying the Web page to a plurality of users located at respective client nodes, and in response to the Web page being displayed to each user, each client node initiating the client side routine to perform the following:

detecting in-view user activities associated with each respective user browsing the Web page, wherein the in-view user activities are associated with in-view response data reflecting whether or not the content data was viewable or partially viewable to each respective user;

collecting data reflecting the in-view user activities, wherein the collected data includes information indicating the proportion of content actually viewable to a respective user;

detecting a client side trigger event; and

sending the collected data to the Web server in response to the detected client side trigger event; and

analyzing the collected data to determine user in-view characteristic data reflecting whether the content was viewable or partially viewable by the respective user.

41. (Original) The method of claim 40, wherein the in-view user activities includes at least one of mouse pointer movements, screen scrolling, hyperlink selections, icon selections, data entry, time data associated with mouse pointer position,

time data associated with content position and time data associated with screen scrolling.

42. (Original) The method of claim 40, wherein the in-view user activities includes non-activated in-view response data reflecting whether the content data was viewable or partially viewable to each respective user, wherein the non-activated in-view response data is user response data that is not associated with a user activating a button, icon or hyperlink on the Web page.

43. (Original) The method of claim 40, wherein the client side routine is appended to a URL placed on the Web page.

44. (Original) The method of claim 40, wherein the collected data is stored in a client side data store and each client side trigger event is associated with each respective client side data store being filled with the collected data above a predetermined threshold level.

45. (Original) The method of claim 40, wherein each client side trigger event is associated with a respective user closing a browser application executing at a respective client node.

46. (Original) The method of claim 40, wherein each client side trigger event is associated with a respective user, located at a respective client node, selecting a URL displayed on the Web page.

47. (Canceled)

48. (Previously Presented) The method of claim 40, further comprising:
analyzing the collected data at the Web server;
generating billing records based on the analysis of the collected data; and
sending the billing records to at least one of a plurality of third party nodes.

49. (Original) The method of claim 48, wherein the content data includes a plurality of third party content data, and wherein each third party content data is provided by a respective one of the plurality of third party nodes.

50. (Original) The method of claim 40, wherein the in-view user activities are mouse pointer position data.

51. (Previously Presented) A system for performing dynamic Web-based analysis, the system comprising:

means for sending a Web page provided by a Web server to a plurality of client nodes, wherein the Web page includes content data;

means for displaying the Web page to a plurality of users located at respective client nodes;

means for detecting in-view user activities associated with each respective user browsing the Web page, wherein the in-view user activities are associated with in-view response data reflecting whether or not the content data was viewable or partially viewable to each respective user;

means for collecting data reflecting the in-view user activities, wherein the collected data includes information indicating the proportion of content actually viewable to a respective user;

means for detecting a client side trigger event;

means for sending the collected data to the Web server in response to the detected client side trigger event; and

means for analyzing the collected data to determine user in-view characteristic data reflecting whether the content was viewable or partially viewable by the respective user.

52. (Original) The system of claim 51, wherein the in-view user activities includes at least one of mouse pointer movements, screen scrolling, hyperlink selections, icon selections, data entry, time data associated with mouse pointer position, time data associated with content position and time data associated with screen scrolling.

53. (Original) The system of claim 51, wherein the in-view user activities includes non-activated in-view response data reflecting whether the content data was viewable or partially viewable to each respective user, and wherein the non-activated in-view response data is user response data that is not associated with a user activating a button, icon or hyperlink on the Web page.

54. (Original) The system of claim 51, wherein the means for detecting in-view user activities, means for collecting, means for detecting a client side trigger event and means for sending are all included in a client side routine that is appended to a URL placed on the Web page.

55. (Original) The system of claim 51, wherein the collected data is stored in a client side data store and each client side trigger event is associated with each respective client side data store being filled with the collected data above a predetermined threshold level.

56. (Original) The system of claim 51, wherein each client side trigger event is associated with a respective user closing a browser application executing at a respective client node.

57. (Original) The system of claim 51, wherein each client side trigger event is associated with a respective user, located at a respective client node, selecting a URL displayed on the Web page.

58. (Canceled)

59. (Original) The system of claim 51, further comprising:

means for analyzing the collected data;

means for generating billing records based on the analysis of the collected data;
and

means for sending the billing records to at least one of a plurality of third party nodes.

60. (Original) The system of claim 59, wherein the content data includes a plurality of third party content data, and wherein each third party content data is provided by a respective one of the plurality of third party nodes.

61. (Original) The system of claim 51, wherein the in-view user activities are mouse pointer position data.

62. (Previously Presented) A computer-readable medium for performing dynamic Web-based in-view monitoring, the method comprising:

appending a client side routine to a Web page provided by a Web server, wherein the Web page includes content data;

sending the Web page to a plurality of client nodes; and

displaying the Web page to a plurality of users located at respective client nodes, and in response to the Web page being displayed to each user, each client node initiating the client side routine to perform the following:

detecting in-view user activities associated with each respective user browsing the Web page, wherein the in-view user activities are associated with in-view response data reflecting whether or not the content data was viewable to each respective user;

collecting data reflecting the in-view user activities, wherein the collected data includes information indicating the proportion of content actually viewable to a respective user;

detecting a client side trigger event; and

sending the collected data to the Web server in response to the detected client side trigger event; and

analyzing the collected data to determine user in-view characteristic data reflecting whether the content was viewable or partially viewable by the respective user.

63. (Original) The computer-readable medium of claim 62, wherein the in-view user activities includes at least one of mouse pointer movements, screen scrolling, hyperlink selections, icon selections, data entry, time data associated with mouse pointer position, time data associated with content position and time data associated with screen scrolling.

64. (Original) The computer-readable medium of claim 62, wherein the in-view user activities includes non-activated in-view response data reflecting whether the content data was viewable or partially viewable to each respective user, wherein the non-activated in-view response data is user response data that is not associated with a user activating a button, icon or hyperlink on the Web page.

65. (Original) The computer-readable medium of claim 62, wherein the client side routine is appended to a URL placed on the Web page.

66. (Original) The computer-readable medium of claim 62, wherein the collected data is stored in a client side data store and each client side trigger event is associated with each respective client side data store being filled with the collected data above a predetermined threshold level.

67. (Original) The computer-readable medium of claim 62, wherein each client side trigger event is associated with a respective user closing a browser application executing at a respective client node.

68. (Original) The computer-readable medium of claim 62, wherein each client side trigger event is associated with a respective user, located at a respective client node, selecting a URL displayed on the Web page.

69. (Canceled)

70. (Previously Presented) The computer-readable medium of claim 62, further comprising:

analyzing the collected data at the Web server;

generating billing records based on the analysis of the collected data; and

sending the billing records to at least one of a plurality of third party nodes.

71. (Original) The computer-readable medium of claim 70, wherein the content data includes a plurality of third party content data, and wherein each third party content data is provided by a respective one of the plurality of third party nodes.

72. (Original) The computer-readable medium of claim 62, wherein the in-view user activities are mouse pointer position data.

Claims 73-84 (Canceled, with claims 76-84 being canceled in connection with the proposed amendment filed concurrently with this Appeal Brief pursuant to 37 C.F.R. §§ 1.116 and 41.33(b).)

Application No.: 09/660,495
Attorney Docket No.: 05793.3033-00000

Evidence Appendix to Appeal Brief Under Rule 41.37(c)(1)(ix)

There is no evidence being relied upon by Appellants in this appeal.

Application No.: 09/660,495
Attorney Docket No.: 05793.3033-00000

Related Proceedings Appendix to Appeal Brief Under Rule 41.37(c)(1)(x)

There are currently no other appeals or interferences, of which Appellants, Appellants' legal representative, or Assignee are aware, that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.